



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167583

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that the Petitioner was overpaid childcare benefits in February – April 2014 and June-July 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Sheila Easley, Child Care Subsidy Specialist, Sr.
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On January 7, 2014, the Petitioner completed an application for FoodShare, Health Care and Childcare. In that application the Petitioner reported employment with a health and rehab center, working 60.24 hours per pay period at \$11.25 an hour. The Petitioner also reported receiving unemployment compensations and supplemental security income. (Exhibit 2, pgs. 68-75)
3. As verification of her employment, the Petitioner submitted paystubs from the health and rehab center. The pay information for a check dated December 8, 2013 showed both regular and overtime pay. That paystub dated December 20, 2013 reflected regular wages at \$11.25 an hour, shift pay and paid time off. The paystub also showed a year-to-date total for overtime of \$6,200.80. (Exhibit 2, pgs. 76-77)
4. On June 24, 2014, the Petitioner submitted a Six Month Report Form (SMRF), in which she reported no changes in income other than a pay raise to \$11.36 per hour. The Petitioner signed the form, indicating the answers were correct and complete. (Exhibits 3, pgs. 83-87)
5. On June 26, 2014, the agency checked Department of Workforce Development Records and discovered the Petitioner was employed with another medical group. (Exhibit 2, pg. 16)
6. On July 1, 2014, the Petitioner submitted verification of her employment / termination with the medical group. (Exhibit 2, pgs. 16 and 91)
7. The Petitioner had been employed with the medical group from January 6, 2014 through March 21, 2014. (Exhibit 2, pg. 91)
8. On June 17, 2015, the Department of Children and Families (the agency) sent the Petitioner a manual Child Care Client Overpayment Notice, claim # [REDACTED], indicating that she was overpaid \$2404.10 in child care benefits for the period of February 16, 2014 through August 31, 2014. (Exhibit 2, pgs. 1-2)
9. On June 17, 2015, Milwaukee Enrollment Services sent the Petitioner an automated notice of the same overpayment (Exhibit 2, pgs. 3-4)
10. On July 2, 2015, the Public Assistance Collections Unit sent the petitioner a Repayment Agreement. (Exhibit 2, pgs. 7-9)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 28, 2015. (Exhibit 1)

DISCUSSION

“All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client.” *Wisconsin Shares Child Care Manual (CCM)*¹ §3.5.2; See also §2.1.4.2, *Wis. Admin. Code §DCF 101.23* and *Wis. Stat. § 49.195(3)*

In other words, it doesn’t matter who caused the overpayment; the county agency is legally required to seek recovery of all overpayments of child care benefits.

However, when overpayments are caused by agency error, the claim only extends back 12 months from the date of discovery. *CCM* §3.5.2

¹ The Wisconsin Shares Child Care Assistance Manual can be viewed on line at:

<http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. See also *CCM* §3.5.2

In the case at hand, it is undisputed that the Petitioner did **not** use child care in January 2014 and May 2014. The Petitioner does not dispute the fact that she used the childcare benefits in question for February - April 2014, and June - August 2014.

It is the agency's contention that an overpayment of benefits occurred between February 16, 2014 and August 31, 2014, because the Petitioner failed to report the income from the three months she was employed with the medical group and because the Petitioner under reported her income from the rehab facility.

The child care benefit received is dependent upon income. "The parent's share of the cost is determined on a sliding scale, depending upon family income, family size, the number of children in subsidized care and the type of child service chosen." <http://dcf.wi.gov/childcare/wishares/eligibility.htm> So, if the Petitioner wasn't reporting all of her income, she would receive a bigger benefit, than she was entitled to receive.

With regard to the overpayment attributable to the Petitioner's employment with the medical group, it is clear from her January 2014 application/renewal and the case comments that she did not report her job with the medical group. Granted, she was hired the day before she completed her renewal and had not yet received her first paystub. However, there is no record of her reporting any of the additional income she received from this job. Thus, it is found that an overpayment of benefits occurred between February 16, 2014 and March 21, 2014, due to client error.

With regard to the overpayment attributable to the inaccurate accounting of Petitioner's income from the rehab facility, I find that to be due to agency error. In January 2014, when the Petitioner came into the agency, she came with her paystubs which showed that she had other income, besides her regular wages. Apparently, the agency didn't count any of her shift pay or over-time pay, even though they were made aware of it. Thus, while an overpayment of benefits occurred due to this failure to accurately count Petitioner's income, the overpayment from March 22, 2014 through August 31, 2014, is due solely to agency error.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid childcare benefits in February – April 2014 and June-July 2014.

The agency incorrectly determined that the overpayment from March 21, 2014 through July 31, 2014 was due to client error.

THEREFORE, it is

ORDERED

That the agency amend the subject overpayment to reflect client error for the period of February 16, 2014 through March 21, 2014; and to reflect agency error for the period of March 22, 2014 through August 21, 2014.

The agency shall take all administrative steps to complete this task within ten days of this decision.

In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

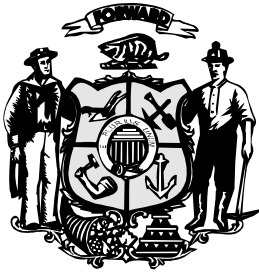
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of November, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 9, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud